

COMMITTEE AMENDMENT FORM

DATE: 05/27/09

COMMITTEE CITY UTILITIES

PAGE NUM(S) 2

ORDINANCE I. D. #09-O-0849

SECTION (S) 1

RESOLUTION I. D. #09-R-

PARA.

1. AMENDS THE LEGISLATION BY INSERTING A NEW SECTION 1 WHICH CHANGES HOW THE FUNDS ARE TO BE SPENT INSTEAD OF ONE (1) FUND THERE ARE NOW TWO (2) FUNDS BEING USED.

2. THE LEGISLATION IS FURTHER AMENDED BY ATTACHING THE REFERENCED EXHIBIT "A" THE MEMORANDUM OF UNDERSTANDING.

AMENDMENT DONE BY COUNCIL STAFF 05/27/09

AN AMENDED ORDINANCE BY
CITY UTILITIES COMMITTEE

09-O-0849

AUTHORIZING THE REIMBURSEMENT OR PAYMENT OF ONE MILLION THREE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$1,385,000.00) IN LOCAL MATCH FUNDS FOR THE CONSTRUCTION OF THE BUCKHEAD PEDESTRIAN BRIDGE/PLAZA PROJECT TO SUPPLEMENT A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE METROPOLITAN AREA RAPID TRANSIT AUTHORITY (MARTA); AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta executed a Memorandum of Understanding Agreement with the Metropolitan Area Rapid Transit Authority ("MARTA") for the project identified as the Buckhead Pedestrian Bridge Plaza Project herein attached as Exhibit "A"; and

WHEREAS, the City has proposed that a pedestrian walkway be built connecting certain properties within the City on the easterly side of Georgia State Route 400 with certain properties on the westerly side; and

WHEREAS, the proposed walkway will pass across and over the Metropolitan Area Rapid Transit Authority's ("MARTA") Buckhead Rail Transit Station (the "Buckhead Station"); and

WHEREAS, the construction of the proposed walkway and of an entrance from it into the Buckhead Station will benefit both parties; and

WHEREAS, MARTA, subject to the terms and conditions of this agreement, shall design the project which is estimated at Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000.00), of which the City has agreed to pay Ten percent (10%) of the design costs for the Buckhead Pedestrian Bridge Plaza Project; and

WHEREAS, the City has paid One Hundred Fifty-Seven Thousand Seven Hundred Twenty-Eight Dollars (\$157,728.00) toward design costs with \$127,272.00 remaining to be billed by MARTA to the City of Atlanta; and

WHEREAS, the cost of constructing this project is estimated to be approximately \$13,850,000.00 of which the City will contribute ten percent (10%) for a not to exceed amount of \$1,385,000.00 toward construction costs; and

WHEREAS, the City of Atlanta now wishes to contribute allocated Quality of Life funds in the amount of One Million One Hundred Ninety-One Thousand Three Hundred Ninety-Four Dollars and Ten Cents (\$1,191,394.10) and contribute General Government Capital funds in the amount of One Hundred Ninety-Three Thousand Six

Hundred Five Dollars and Ninety Cents (\$193,605.90) for an amount not to exceed \$1,385,000.00 to the project as reimbursement of local funds to be paid directly to MARTA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

SECTION 1: The City of Atlanta now wishes to contribute allocated Quality of Life funds in the amount of One Million One Hundred Ninety-One Thousand Three Hundred Ninety-Four Dollars and Ten Cents (\$1,191,394.10) and contribute General Government Capital funds in the amount of One Hundred Ninety-Three Thousand Six Hundred Five Dollars and Ninety Cents (\$193,605.90) for an amount not to exceed One Million Three Hundred Eighty Five Thousand Dollars (\$1,385,000.00) to the Buckhead Pedestrian Bridge Plaza Project as reimbursement of local funds to be paid directly to the Metropolitan Area Rapid Transit Authority toward construction costs.

SECTION 2: The City of Atlanta executed a Memorandum of Understanding (attached hereto as Exhibit "A") with MARTA for said project.

SECTION 3: That contributions for said project shall be charged to and paid from Fund: 3138 (2008 Quality of Life Bond); Fund: 3502 (General Government Capital); Department/Org: 130308 (DPW Transportation Design); Expenditure Type: 5414002 (Fac other than Buildings/Infra CIP); Function Activity: 4270000 (Traffic Engineering) and PTAE0 Funding Source: 13102555/102/313821776/5414002/COA; 13101651/101/350291105/5414002/COA.

SECTION 4: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING

Pedestrian Walkway

Buckhead Rail Transit Station

THIS AGREEMENT, made and entered into as of this 18th day of December, 2001, by and between the **Metropolitan Atlanta Rapid Transit Authority**, a public body corporate under the laws of the State of Georgia, hereinafter called and referred to as MARTA, and the **City of Atlanta**, a body corporate and politic under the laws of the State of Georgia, hereinafter called and referred to as the City.

WHEREAS, the City has proposed that a pedestrian walkway be built connecting certain properties within the City on the easterly side of Georgia State Route No. 400 with certain properties on the westerly side thereof; and

WHEREAS, the proposed walkway will pass across and over MARTA's Buckhead Rail Transit Station (the "Buckhead Station"); and

WHEREAS, the construction of the proposed walkway and of an entrance from it into the Buckhead Station will benefit both parties.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and undertakings hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, they have agreed and do hereby agree as follows:

SECTION 1: The City's proposed sidewalk construction in the vicinity of the MARTA Transit Station located at 3360 Peachtree Road ("the Buckhead Station") and the proposed pedestrian walkway connecting certain properties within the City on the easterly side of Georgia State Route No. 400 with certain properties on the westerly side thereof is hereinafter called and referred to as the "Project." The Project is shown on a drawing titled Buckhead Station, North Concourse with Pedestrian Bridge, dated May 3, 2000, a copy of which is attached hereto and by this reference made a part hereof (the "Working Design"). MARTA, subject to the terms and conditions of this Agreement, shall design and build the Project. The cost of designing the Project is estimated at \$2,850,000. MARTA shall pay ninety percent (90%) of these design costs and the City ten percent (10%) of these design costs thereof, up to the estimated total of \$2,850,000. MARTA shall not be obligated to pay more than \$2,565,000, nor the City more than \$285,000, for this design. Subject to the foregoing MARTA shall bill the City for the portion of the Project costs which it incurs under this Agreement and the City shall not be obligated to pay any funds to MARTA under this Agreement until MARTA has paid such costs to third parties employed in the design phase of this Project.

cc: Cathy Gesick

SECTION 2: The cost of constructing the Project is estimated to be approximately \$13,850,000 and both Parties understand and agree that an accurate estimate of the cost of a project of such scope cannot be undertaken without significant preliminary design and other types of study. Prior to the approval and execution of other agreements concerning the Project, and notwithstanding any other language contained elsewhere in this Agreement, either Party may elect to withdraw from this Agreement should the Project cost be reasonably estimated to exceed \$13,850,000.

SECTION 3: The parties recognize that construction of the Project is to be financed in large part by means of financial assistance from the Federal Transit Administration, U.S. Department of Transportation and agree that the Project is to be built in phases, according to the availability of funds obtained through such grants. MARTA agrees to apply for all such grants as are or may become available for the funding of the Project and shall list the City of Atlanta as a co-applicant. Each party agrees to be responsible for one-half of the local share of funds required to be contributed to the total cost of the Project in order to obtain any such grants. All grant applications shall be for a design approved by both parties and within the cost parameters generated by the preliminary design and study which is the subject of this Agreement. If no grants sufficient to fund the Project are obtained, this agreement shall lapse and be of no further force and effect. MARTA shall have no obligations to begin construction work until legally valid and binding commitments of funding have been obtained that are sufficient to ensure completion of the whole of the Project, provided however, that when legally valid and binding commitments of funding have been obtained and all easement and real estate commitments and interests have been obtained as provided in Section 4, MARTA will begin construction in a timely manner so that no funding commitment shall be allowed to lapse because of MARTA's failure to begin construction. All such funding commitments shall provide that they are for the benefit of MARTA, as well as that of the City or of other parties, and that MARTA shall have the right to enforce them directly.

SECTION 4: According to the Working Design, the scope of the Project anticipates that certain easements and other interests in real property be obtained for certain portions of the right of way of the Project that are currently in hands of persons not parties to this Agreement. Neither party shall have an obligation to enter into other agreements concerning the Project or to begin work pursuant to such other agreements, if entered into, whether for design, (other than the design work specified in this Agreement), construction, or other work on the Project, or to incur any expense with respect thereto, unless and until legally valid easements or other interests in real property have been obtained that are sufficient to ensure completion of the whole of the Project pursuant to the design agreed to by the parties. The City has provided or will provide to MARTA satisfactory evidence of the necessary easements. The City will exercise the power of eminent domain to acquire easements if necessary to meet the project schedule and funding deadlines. All such easements, or other property interests, shall provide that they are for the benefit of MARTA, as well as that of the City or of other parties, and that MARTA shall have the right to enforce them directly. That part of the Project which is constructed across and over the Buckhead Station shall be subject to an easement for the public to traverse through, over, and along it and shall include an easement in favor of the City to traverse through, over, and along it to maintain and repair its portion of the

Project. MARTA's agreement to provide easements for the public and the City to pass and repass through, across and over all parts of the Project owned by it, shall survive this Agreement. MARTA shall not deny access by the public or the City to any part of the Project owned by it and subject to this easement except when necessary for maintenance and repair. MARTA agrees that should it become necessary to restrict access by the public or the City to any part of the Project subject to this easement, for reason of maintenance and repair, that such maintenance and repair shall be accomplished in a timely manner. MARTA shall have easements of access for its employees and passengers to pass and repass through, across, and over all parts of the walkway Project.

SECTION 5: The City shall cooperate fully in the design and construction of the Project, and shall give MARTA all practicable assistance that MARTA requests. The City shall during the design phase, and after fifteen (15) days notice from MARTA that such information is required, provide to MARTA, such information about any agreement between the City and the Georgia Power Company, or such entity designated by the City, for the provision of lighting for the Projects which is necessary for MARTA to complete the design phase of the Project. The City shall during the design phase, and after fifteen (15) days notice from MARTA that such information is required, provide to MARTA, such information about the location and other specifications of fire hydrants, standpipes or other fire fighting equipment which is necessary for MARTA to complete the design phase of the Project.

SECTION 7: MARTA shall require all of its contractors building the Project or parts thereof to give the performance and payment bonds required by O.C.G.A., §. 13-10-1, and shall require that such bonds shall name both MARTA and the City as co-obligees. The City shall not require MARTA or its contractors or subcontractors building the Project obtain a land disturbance bond as required by City Code § 74-71, but MARTA shall provide a plan to the commissioner of public works which meets the requirements of City Code § 74-43. The City shall issue all construction permits that comply with the requirements of the City Code without cost to MARTA or its contractors or sub-contractors.

SECTION 8: The City and MARTA herein designates a representative with whom the other party shall deal with respect to all matters concerning the Project or this agreement and agrees that these representatives shall be available to the other party at all reasonable times. These representatives and their addresses and telephone numbers may be changed from time to time by written notice be sent by certified mail, return receipt requested.

City of Atlanta: Commissioner Michael Dobbins c/o Harry Boxler
City of Atlanta
Department of Planning, Development & Neighborhood Conservation
55 Trinity Street, S.W., Suite 1450
Atlanta, Georgia 30335
404 330 6911

MARTA: Franklin B. Ward, RA
Project Manager
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road N.E.
Atlanta, Georgia 30324-3330
404 848 5188

SECTION 9: Upon the opening of the Project for public use, that part of the Project which passes across and over MARTA's Buckhead Station, together with the entrance from it into the said station, along with the pedestrian bridges that cross over GA400 highway to touchdown points in easements as stipulated in Section 4, shall thereafter be the property of MARTA. At all times after the opening of the Project for public use MARTA shall own, maintain, and repair this part of the Project, including the connection of MARTA's portion of the Project to the portion of the Project owned by the City or other parties. MARTA shall have no further responsibility for any other part of the Project.

SECTION 10: Prior to the opening of the Project for public use, the City and MARTA shall allocate the responsibility for police services to the Project.

SECTION 11: Prior to the opening of the Project for public use, the City and other parties with ownership interests in real property subject to any easement under this Agreement (the "Other Owners") shall allocate the responsibility for providing and/or paying the cost for janitorial services, customary and necessary to provide cleaning, sweeping, and trash removal for that part of the Project not owned by MARTA. Should such agreement to allocate the responsibility and cost for janitorial services not be reached, the terms of Section 9 shall limit MARTA's responsibility to that part of the Project which it owns.

SECTION 12: Prior to the opening of the Project for public use, MARTA, the City and the Other Owners shall allocate the responsibility for paying the cost of any electricity, gas or water for that part of the Project not owned by MARTA. Should such agreement to allocate the responsibility for the cost of electricity, gas or water not be reached, the terms of Section 9 shall limit MARTA's responsibility to that part of the Project which it owns.

SECTION 13: This Agreement, including the exhibits and attachments hereto and any other document referred to herein and made a part hereof, constitutes the entire contract between the parties, and excludes and supersedes any statement or undertaking, oral or written, not included herein. This Agreement cannot be changed, modified, or amended except by a writing signed on behalf of the parties by their duly authorized representatives.

SECTION 14: This Agreement shall be subject to and governed by the laws of the State of Georgia.

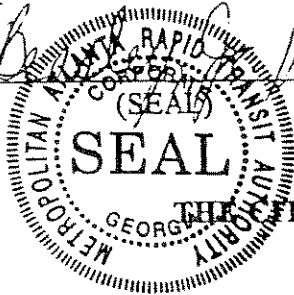
SECTION 15: This Agreement shall not be binding on the City and the City shall incur no liability


hereunder until the Agreement has been signed by the Mayor and a signed copy delivered to MARTA.

THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

Attest:

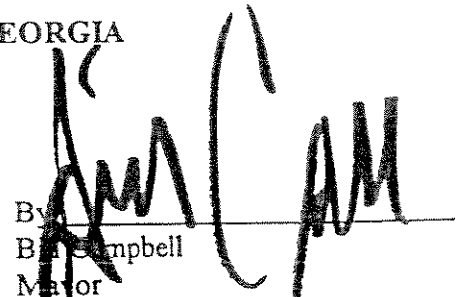

Secretary




By: 
Nathaniel P. Ford, Sr.
General Manager/CEO

Attest:

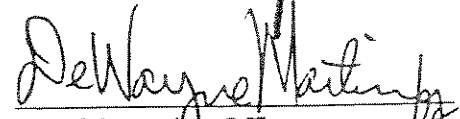

Municipal Clerk (SEAL)

By: 
Bill Campbell
Mayor


Approved:


Commissioner, Department of Planning,
Development and Neighborhood Conservation

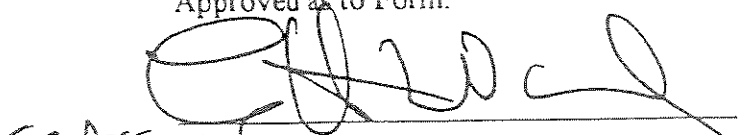
Recommended:


Chief Operating Officer


Commissioner, Department of Public Works


Chief Financial Officer

Approved as to Form:


Sr. Asst. City Attorney

**AN ORDINANCE BY
CITY UTILITIES COMMITTEE**

AN ORDINANCE AUTHORIZING THE REIMBURSEMENT OR PAYMENT OF ONE MILLION THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$1,385,000.00) IN LOCAL MATCH FUNDS FOR THE CONSTRUCTION OF THE BUCKHEAD PEDESTRIAN BRIDGE/PLAZA PROJECT TO SUPPLEMENT A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE METROPOLITAN AREA RAPID TRANSIT AUTHORITY (MARTA); AND FOR OTHER PURPOSES.

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

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SECTION 2: The City of Atlanta executed a Memorandum of Understanding (attached hereto as Exhibit "A") with the Metropolitan Area Rapid Transit Authority for said project.

SECTION 3: That contributions for said project shall be charged to and paid from Fund 3138 (2008 Quality of Life Bond) Fund 3502 (General Government Capital Outlay) Department 130308 (DPW Transportation Design) Account 5414002 (Fac Other Than Buildings/Infra-CIP) Function Activity 4270000 (Traffic Engineering) and PTAE0 Funding Source: 13102555/102/313821776/5414002/COA 13101651/101/350291105/5414002/COA.

SECTION 4: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: AN ORDINANCE AUTHORIZING THE REIMBURSEMENT OR PAYMENT OF ONE MILLION THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$1,385,000.00) IN LOCAL MATCH FUNDS FOR THE CONSTRUCTION OF THE BUCKHEAD PEDESTRIAN BRIDGE/PLAZA PROJECT TO SUPPLEMENT A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE METROPOLITAN AREA RAPID TRANSIT AUTHORITY (MARTA); AND FOR OTHER PURPOSES.

Council Meeting Date: June 1, 2009

Requesting Dept.: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to assist MARTA with funding to construct a pedestrian bridge over the GA 400.

2. Please provide background information regarding this legislation.

The MARTA Buckhead Rail Transit Station is located on the GA 400, and currently has one entrance off Peachtree Road. However, due to the growing development and ridership demand, there is a necessity to build pedestrian access to the station for the properties on the east and west side of the GA 400 as well.

3. If Applicable/Known:

(a) Contract Type (e.g. Professional Services, Construction Agreement, etc):
Construction

- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:**

4. Fund Account Center: 13102555 102 313821776 5414002 COA; 13101651 101 350291105 5414002 COA

5. Source of Funds: Quality of Life Bond Funds; General Government Capital Outlay Funds

6. Fiscal Impact: \$1,385,000.00

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Soraya Belgrave

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6002

Originating Department: Department of Public Works

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: April 28, 2009

Anticipated Committee Meeting Date(s): May 12, 2009

Anticipated Full Council Date: June 1, 2009

Legislative Counsel's Signature: Saul Schultz

Commissioner Signature: [Signature]

Chief Procurement Officer Signature: _____

CAPTION

AN ORDINANCE AUTHORIZING THE REIMBURSEMENT OR PAYMENT OF ONE MILLION THREE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$1,385,000.00) IN LOCAL MATCH FUNDS FOR THE CONSTRUCTION OF THE BUCKHEAD PEDESTRIAN BRIDGE/PLAZA PROJECT TO SUPPLEMENT A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE METROPOLITAN AREA RAPID TRANSIT AUTHORITY (MARTA); AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: AME 4/29/09 Reviewed by: 5/3/09 AMO
(date) (date)

Submitted to Council: _____